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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,487	10/20/2003	Thomas W. Davison	ENDIUS.26CP1C2	7935

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EXAMINER
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WOODALL, NICHOLAS W

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/689,487

**Applicant(s)**

DAVISON, THOMAS W.

**Examiner**

Nicholas Woodall

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 18-22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley (U.S. Patent 5,792,044) in view of Ash (WO 8303189 A1).

Regarding claims 18-22, Foley discloses a system comprising an elongated body that can be usable with at least two fasteners (column 15 lines 3-20) and an elongated viewing element, which can be mounted to the elongated body (column 5 lines 51-65). Foley fails to disclose a system comprising an elongated body that is expandable at the distal end at a first location. Ash discloses a device for use in minimally invasive surgical procedures that comprises an elongated body that is expandable at the distal end in order to provide viewing and operation room (page 2 lines 24-35). It would have been obvious to one having ordinary skill in the art at the time of the invention to manufacture the elongated body of Foley with an expandable distal end in view of Ash in order to provide viewing and operation room.

3. Claims 23, 24, 27-29, 31-37, and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley (U.S. Patent 5,792,044) in view of Ash (WO 8303189 A1) further in view of Mathews (U.S. Patent 6,033,406).

Regarding claims 23, 24, 27-29, 31-37, and 39-40, the combination of Foley and Ash disclose the invention as claimed except for the fasteners being pedicle screws and

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the system further comprising a fixation element. Mathews teaches of a spinal fusion system for use in minimally invasive procedures, which contains at least two pedicle screws with a convex engagement surface, a fixation element, and fasteners for locking the fixation element to the screws, in order to greatly decrease the risk of pin tract secretions, infections, or the potential of osteomyelitis (column 2 lines 9-10). It would have been obvious to one having ordinary skill in the art at the time of the invention to use the system of Foley modified by Ash with a spinal fusion system in view of Mathews in order to greatly decrease the risk of pin tract secretions, infections, or the potential of osteomyelitis.

4. Claims 25, 30, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley (U.S. Patent 5,792,044) in view of Ash (WO 8303189 A1) further in view of Mathews (U.S. Patent 6,033,406) further in view of Justis (U.S. Patent 6,292,949).

Regarding claims 25, 30, and 38, the combination of Foley, Ash, and Mathews disclose the invention as claimed except for the fixation element of the spinal fusion system for the spine being a rod. Justis teaches a spinal fusion system wherein the fixation element that can be either a plate or rod since they are functionally equivalent (column 4 lines 58-67). It would have been obvious to one having ordinary skill in the art at the time of the invention to manufacture the system of Foley modified by Ash further modified by Mathews with a fixation rod instead of a fixation plate in view of Justis because it is known in the art that a fixation plate and a fixation rod are functionally equivalent.

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5. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foley (U.S. Patent 5,792,044) in view of Ash (WO 8303189 A1) further in view of Mathews (U.S. Patent 6,033,406) further in view of Justis (U.S. Patent 6,292,949) further in view of Heinig (U.S. Patent 4,887,595).

Regarding claim 41, the combination of Foley, Ash, Mathews, and Justis disclose the invention as claimed except for the spinal fusion system further comprising a washer. Heinig teaches a spinal fusion system comprising a washer in order to space the plate element away from the vertebrae (column 4 lines 9-13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the system of Foley modified Ash further modified by Mathews further modified Justis with a washer in view of Heinig in order to space the plate from the vertebrae.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

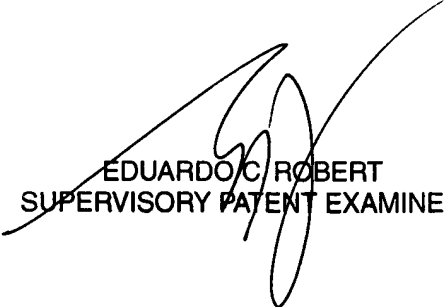
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER